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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re JOSE E. et al., Persons
Coming Under the Juvenile
Court Law.

B288987
(Los Angeles County
Super. Ct. No. 17CCJP01249)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

NANCY R.,

Defendant and Appellant.

APPEAL from the jurisdictional and dispositional orders as well as a custody order of the Superior Court of Los Angeles County, Stephen Marpet, Commissioner. The jurisdictional and

custody orders are affirmed. The appeal from the dispositional order is dismissed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

Mother Nancy R. challenges the juvenile court's jurisdictional order and subsequent order awarding her and father joint custody over two of mother's children. Although mother initially challenged the juvenile court's dispositional order, she later acknowledged her challenge became moot when the juvenile court returned her children to her custody.

Under the appropriate standard of review, ample evidence supported the juvenile court's jurisdictional order. Mother and father engaged in severe domestic violence. Mother drove her car into father as father held their two-year-old child. At the time of the jurisdictional hearing, mother did not testify, and no evidence indicated that mother understood the seriousness of the violence or understood how to protect her children.

Eventually, both mother and father made progress, and the juvenile court returned the children to their joint custody. Mother demonstrates no abuse of discretion in awarding both mother and father joint custody of their two children. We affirm the jurisdictional order and joint custody order. We dismiss the appeal from the dispositional order.

BACKGROUND

Mother and father had a contentious relationship and dated for three to five years. (Mother described a three year relationship and father described a five year one.) They have two children, J.V. and L.R. At the time the dependency petition was filed in October 2017, J.V. was two years old and L.R. was eight months old. Mother has two older children, J.E. (who was eight years old in October 2017) and A.R. (who was five years old in October 2017). Father is not the father of J.E. or A.R.

In September 2017, a court issued a restraining order protecting mother and requiring that father remain at least 100 yards away from mother. On October 10, 2017, father applied for a restraining order protecting him, J.V., and L.R. from mother.

1. Dependency petition

The Department of Children and Family Services (DCFS) filed a petition in October 2017 requesting the juvenile court take jurisdiction over J.E., A.R., J.V., and L.R. As subsequently sustained, the petition alleged that mother and father have a history of engaging in violent altercations. Mother drove her car into father, hitting his leg while father held J.V. Mother threatened to kill father. Father sat on mother's vehicle holding J.V. to prevent mother from driving. Additionally, while father held J.V., mother struck father's face and scratched him.

The sustained allegations also included the following: In A.R.'s presence, father pushed mother, and mother slapped father. Mother and father also engaged in violence on other occasions.

2. DCFS reports preceding jurisdiction

Several family members described frequent violence between mother and father. A.R. reported that mother and father frequently fought. A.R. observed father push mother. She also observed mother hit father's face. J.E. reported observing father choke mother and pull her hair. Paternal grandmother reported that mother drove her car into father while father was holding J.V. Mother previously had threatened to drive her car into father. Maternal aunt reported that mother and father frequently engaged in incidents of domestic violence. Father grabbed and hit mother, causing mother to obtain a restraining order.

Mother's roommate stated that during that during August through October 2017, father regularly spent the night in mother's home notwithstanding mother's restraining order. Mother's roommate also reported that when mother refused to return father's car keys to him, father jumped in front of the car, holding one of the children.

Mother and father both acknowledged violence between them, but each blamed the other and accused the other of dishonesty. On October 9, 2017, police arrested mother for domestic battery. On the same day, police arrested father for violating a restraining order.

At the time of the jurisdictional hearing, DCFS reported that mother had enrolled in a parenting class, individual counseling, and domestic violence counseling. Father had enrolled in individual counseling and domestic violence counseling. DCFS reported that each parent continued to blame the other, and neither accepted responsibility for his or her misconduct.

Although mother's therapist initially reported that mother completed her goals, when questioned by a social worker, mother's therapist revised her conclusion. Mother's therapist acknowledged that mother neither accepted responsibility for her actions nor provided a plan to protect her children. Mother's therapist wrote a letter recommending that mother continue therapy and indicating that she previously had been unaware of the severity of the abuse mother inflicted on father.

3. The juvenile court assumed jurisdiction over the children

No witness testified at the jurisdictional hearing held January 30, 2018. Mother's counsel argued: "My client would agree that there was an altercation that occurred between her and the father." Mother's counsel represented that mother would deny she attempted to hit father with her vehicle. Counsel unsuccessfully requested the court modify the allegations. With respect to disposition, counsel argued that mother had taken responsibility and requested the court refrain from ordering mother to complete additional educational programs.

The juvenile court assumed jurisdiction over the children and ordered that the children remain outside mother and father's custody. The juvenile court indicated that mother was a perpetrator of domestic violence, and that both parents violated mother's restraining order. Both mother and father were given monitored visits.

4. DCFS reports preceding the joint custody order

In May 2018, DCFS reported that father participated in parenting classes and individual counseling. Father also

participated in a domestic violence batterer's program. Father began unmonitored visits on April 6, 2018.

Mother enrolled in parenting classes and individual counseling. Mother was "beginning to see her role and open to accepting her responsibility" and acknowledged that she "could benefit from therapy and learn to plan how to best deal with anger and expressing her emotions, instead of reacting automatically with aggression." Mother participated in a domestic violence batterer's program. Mother began unmonitored visits on April 15, 2018. Eventually, mother was able to provide a loving home for the children.

Social workers described father as "caring and loving." According to the social worker, father "engages well and appears to have made significant progress in having accountability for his actions Father is protective and will avoid placing his children at risk of abuse in the future." Father demonstrated that he learned from his multiple classes. He made progress in "taking accountability, addressing his tendency to control, understanding his defensive nature, and learning how positive environments can lead to healthy development of a child." Father demonstrated that he learned "healthy coping skills and problem resolution skills." A social worker described father as "protective" of the children and able to "avoid placing his children at risk of abuse in the future."

Initially, father did not have a home for the children and as a result, DCFS recommended placing them with mother. Eventually father found an adequate home for himself and the children. J.V. had a "positive and loving bonded relationship with her father." Father participated in L.R.'s medical

appointments when she was sick. Father reported a strong bond with L.R.

The children had bruises after one visit with father, and although a physician did not suspect abuse, father was not candid about the cause of the bruising. Father apologized, received counseling, and agreed to participate in in-home parenting classes.

5. The juvenile court terminated jurisdiction awarding parents joint custody

After a hearing, the juvenile court entered a final custody order dated November 28, 2018. The juvenile court awarded mother sole physical and legal custody of J.E. and A.R. The juvenile court awarded mother and father joint legal and physical custody of J.V. and L.R. The court ordered mother and father to alternate physical custody weekly.

DISCUSSION

A. The Juvenile Court’s Jurisdictional Order Was Supported By Substantial Evidence

Mother argues that no substantial evidence supported jurisdiction under Welfare and Institutions Code section 300, subdivisions (a) and (b)(1). Mother acknowledges that she and father engaged in domestic violence within the children’s presence but argues that both mother and father had reformed their behavior prior to the jurisdictional hearing and no longer posed a risk to the children.

Mother’s argument is inconsistent with the standard of review and simply requests a different result, a result even she did not seek at the jurisdictional hearing. “On appeal, ‘[a]

dependency court's jurisdictional findings are reviewed under the substantial evidence test. [Citation.] Under this test, we resolve all conflicts in the evidence, and indulge all reasonable inferences that may be derived from the evidence, in favor of the court's findings.' [Citation.] 'The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.' [Citation.] Importantly, issues of credibility in this context are questions for the trier of fact." (*In re Madison S.* (2017) 15 Cal.App.5th 308, 318.)

Substantial evidence supported the juvenile court's determination that the children continued to be at risk at the time of the jurisdictional hearing. Neither mother nor father testified at the hearing, and no evidence showed that they would ensure the safety of the children, especially given their longstanding personal animosity. Contrary to mother's argument, at the time of the jurisdictional hearing, no evidence supported the conclusion that mother had reformed her conduct and no longer posed a risk of harm to her children. The evidence showed just the opposite. Mother's therapist indicated that mother had not acknowledged the harm she posed and that mother required additional therapy.

Although there was no evidence any child suffered physical injury, mother hit father with her car while father was holding J.V., thereby creating a substantial risk of physical harm to J.V. Additionally, mother and father engaged in violence in the presence of the children, exposing them to harm by requiring them to see and hear violence. (*In re T.V.* (2013) 217 Cal.App.4th 126, 134.) The violence was recurring notwithstanding the fact

that mother had obtained a restraining order. “ ‘The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) For all these reasons, mother’s challenge to the sufficiency of the evidence to support jurisdiction lacks merit.

B. Mother’s Challenge To The Juvenile Court’s Dispositional Order Is Moot

Mother initially argued that no substantial evidence supported the finding that there would be a danger to the children’s physical or emotional well-being if they were returned to mother’s home. However, mother later acknowledged that the juvenile court’s subsequent order placing the children in her care has rendered this argument moot. Respondent also argues that the issue is moot, and we agree. Because the juvenile court ordered the children returned to mother’s custody, this court could offer no relief from the order removing the children from mother’s care.

C. Mother Demonstrates No Abuse Of Discretion In The Juvenile Court’s Custody Determination

Mother argues that the juvenile court abused its discretion when it ordered she and father share physical custody of J.V. and L.R. According to mother, “[i]t was in the best interest of [J.V.] and [L.R.] to remain in the sole physical custody of [mother] with visitation for” father. On appeal, mother argues that father “was not fit for physical custody.”

In making a custody determination, the juvenile court must consider the best interests of the children. (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) We review the juvenile court’s

order for abuse of discretion. (*In re M.R.* (2017) 7 Cal.App.5th 886, 902.) We may not disturb the order unless the juvenile court made an “ “ “ “arbitrary, capricious, or patently absurd determination.” ’ ’ ’ ’” (*Ibid.*)

Here, the juvenile court’s order was not arbitrary, capricious, or patently absurd. Except for one incident of bruising, all of the evidence showed that father provided a loving and caring home for the children. The children bonded with father and had a positive relationship with him.

The isolated incident of bruising does not demonstrate an abuse of discretion in awarding father joint custody. A physician determined that father did not abuse the children, and father apologized for his lack of candor and agreed to additional counseling to prevent a recurrence. When all of the evidence is considered, the juvenile court was not required to find father “unfit,” as mother argues. Mother’s characterization of the juvenile court’s order as disruptive to the children is supported by *no evidence* and therefore fails to show the court acted arbitrarily. The social workers’ reports described father as loving and caring, supporting the determination that it was in the children’s best interest to have a relationship with father (in addition to mother).

Both mother and father have a substantive liberty interest in the care, companionship, and custody of their children. (See *In re Marilyn H.* (1993) 5 Cal.4th 295, 306–307.) That principle generally is invoked to balance a parent’s interest with the state’s interest in ensuring the safety of a child. (*Id.* at p. 306; see also *In re Joseph B.* (1996) 42 Cal.App.4th 890, 900.) To the extent mother invokes it to challenge joint custody, the argument lacks merit because mother’s substantive liberty interest in the care of

her children is no greater than father's. The joint custody order effectuated both parent's interest in the care, companionship, and custody of their children. Mother demonstrates no error in the juvenile court's custody order awarding mother and father joint custody of J.V. and L.R.

DISPOSITION

The juvenile court's jurisdictional order is affirmed. The juvenile court's custody order awarding mother and father joint custody is affirmed. The appeal from the juvenile court's dispositional order is dismissed as moot.

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BENDIX, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.